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November 8, 1993

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CC Docket No. 93-252

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of the Bell Atlantic Companies are an original and four copies of their Comments in the above-referenced rulemaking proceeding.

Should there be any questions regarding these Comments, please communicate with this office.

Very truly yours,

John T. Scott, III

John T. Scott, III

Enclosures

cc: John Cimko, Jr.
Richard J. Shiben
Judith Argentieri
Peter Batacan
Nancy Boocker
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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
	)	
Regulatory Treatment of Mobile Services	)	

COMMENTS OF THE BELL ATLANTIC COMPANIES

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Dated: November 8, 1993

SUMMARY

Congress has given the Commission a landmark opportunity to equalize its regulatory treatment of wireless services, and to reassert its role as the nation's communications policymaker. Up to now the Commission's authority to establish fair rules for the wireless marketplace has been curtailed by forces beyond its control -- the archaic statutory distinctions between private mobile carriers and common carriers, the statutory detariffing and preemption of some competing services but not others, and the long distance restrictions and equal access obligations of the AT&T Consent Decree applicable to some but not all competing providers.

The market for wireless services has suffered as a result. Competing carriers are not treated alike. McCaw can sell cellular interLATA calling plans in Pittsburgh that Bell Atlantic Mobile is forbidden by law from offering. Nextel can enter the California market as a third cellular carrier without the state regulatory review that applies to the existing cellular carriers. The BOCs' wireless carrier affiliates must offer tariffed equal access services, but other providers do not. The list of inequalities goes on and on.

The Commission should seize this opportunity to set things right to the full extent of its new authority to do so -- with broad strokes to achieve large changes, not with narrow and incremental changes. Where Decree-imposed requirements on some carriers remain, the Commission can modify its rules to parallel those requirements and thereby maximize parity. Bell Atlantic

recommends that the Commission take the following actions, and do so in a single comprehensive order:

1. Adopt a broad definition of "commercial mobile service" (CMS) and its related statutory terms, in order to assure that competing mobile services are classified as CMS and are treated alike. (Comments Section I, pp. 3-14). All services which in whole or part are offered for profit to subscribers and that offer direct or indirect access to the public switched network should be considered CMS. Conversely, only a narrow group of genuinely private services would remain as private mobile services.[1/]

2. Classify services to fulfill Congress' goal of regulatory parity. (Section II, pp. 14-17.) If a provider sells service to subscribers offering access to the public switched network, it is offering commercial mobile service. No service should be exempt from CMS regulation simply because it has limited geographic coverage or capacity, or does not employ frequency reuse. Such exemptions would undermine parity and perpetuate the regulatory inequalities that the Commission now has the opportunity to eradicate. SMR, private and common carrier paging, PCS and cellular services should be presumptively treated as CMS. All

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1/ Accordingly, the Commission should (1) adopt broad definitions of "mobile service" to include all services offered by CMS providers and "for-profit" to include all systems that offer excess capacity to subscribers on a commercial basis; (2) define "interconnected service" to include "store-and-forward" as well as "real time" technologies for accessing the public switched network; and (3) define "functional equivalence" broadly to restrict the number of competing services which are not brought under the CMS regulatory umbrella.

providers would be able to offer "private" service if they can demonstrate that it in fact falls outside the definition of CMS.

3. Repeal existing barriers to entry. (Section III, pp. 17-20). All CMS providers should be able to offer dispatch service, and all should be able to build or acquire SMR systems. The existing rules which limit provision of dispatch and SMR service (47 CFR §§ 22.911 and 90.603) are based on statutory provisions which have been changed and technical concerns which are no longer valid. They restrict entry, discriminate against certain classes of mobile carriers, and frustrate competition.

4. Detariff and deregulate CMS in large measure. (Section IV, pp. 20-30). Most CMS providers should not be required or permitted to file tariffs of any kind, including access tariffs, "wholesale" tariffs, or interstate long distance tariffs. Competition at the local exchange level among CMS providers generally, and among cellular carriers in particular, is vigorous and will intensify as PCS services are licensed. Findings by numerous states that the level of cellular competition makes rate regulation unnecessary also support forbearance. Such competition does not, however, exist in the interexchange wireless market. AT&T commands a market position which exceeds even its dominant position in landline long distance service. Given AT&T's dominance, the Commission simply cannot make the findings that the statute requires to forbear from detariffing AT&T's long distance CMS service. Thus the provision of interexchange wireless service by AT&T and its affiliates should remain tariffed.

5. Establish equal access requirements for the entire CMS industry. (Section V, pp. 30-35.) Parity mandates that all CMS providers offer nondiscriminatory equal access to long distance services, with hand-off to an end-user's presubscribed inter-exchange carrier. Equal access hand-off points must be the same for Decree-constrained CMS providers and other providers. Thus the Commission should require all CMS providers to offered non-tariffed equal access, based on wireless exchange areas that are the same as those imposed on the Decree-bound carriers. All CMS providers should offer nondiscriminatory interconnection to their switches, offer nondiscriminatory balloting, and be required to market their own interexchange services in a way that is not prejudicial to competing interexchange providers of CMS services.

6. Establish consistent rules for CMS affiliates of dominant carriers. (Section VI, pp. 35-39.) Accounting safeguards should be applied to all dominant carriers with CMS affiliates. The validity of the structural separations rule (47 CFR § 22.901), which currently applies only to BOC cellular affiliates, should be reexamined now. The rule is the antithesis of parity because it imposes burdensome requirements on only one type of CMS (cellular) provided by only group of providers (BOC affiliates). If there are reasons for keeping the rule, those reasons apply equally to all CMS affiliates of all dominant carriers, and the rule should accordingly be expanded to include them. Otherwise, the rule should be repealed. There is no rational basis to apply it only to BOC cellular affiliates.

7. Require equal interconnection rights and obligations. (Section VII, pp. 39-41.) Nondiscriminatory interconnection is essential to allow the CMS industry to develop and serve customers. CMS providers should comply with the same interconnection requirements which are already imposed on landline carriers.

8. Adopt procedures for responding to state petitions for rate regulation which fulfill Congress' intent. (Section VIII, pp. 41-44.) A petition should be duly authorized by the state itself and identify the specific rate regulations that the state wishes to maintain or impose. If a state seeks to regulate the rates of one or more but not all CMS services, parity requires that the petition make a specific factual showing as to why such unequal regulation is warranted.

These actions will remove some of the impediments that are preventing the wireless industry from competing fairly, eliminate undue regulatory oversight, and implement Congress' intent that the Commission modify its Rules to achieve regulatory parity among competing providers.

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COMMENTS OF THE BELL ATLANTIC COMPANIES

The Bell Atlantic Companies,[1/] by their attorneys, hereby submit their comments on the Commission's Notice of Proposed Rulemaking ("Notice") in the above-referenced proceeding.

INTRODUCTION

This rulemaking will implement changes to Sections 3(n) and 332 of the Communications Act of 1934 ("Act") which were made by Congress in the Omnibus Budget Reconciliation Act of 1993 ("the Budget Act"). Congress' fundamental goal in making these changes was to eliminate disparate regulatory treatment of competing mobile radio services, and to bring them under a single regulatory structure. From its conception in the House bill through the

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1/ These comments are submitted by the Bell Atlantic Telephone Companies (the Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac Telephone Companies, the Diamond State Telephone Company, and the New Jersey Bell Telephone Company), Bell Atlantic Mobile Systems, Inc., the Bell Atlantic Metro Mobile Companies, Bell Atlantic Paging, Inc., and Bell Atlantic Personal Communications, Inc. These companies will be referred to collectively as "Bell Atlantic."

final Budget Act, the underlying principle was "to establish a Federal regulatory framework to govern the offering of all commercial mobile services."[2/] Accordingly, this principle of "regulatory parity" should serve as the polestar for this rulemaking. It should guide the Commission in deciding the issues raised in the Notice.[3/]

The Budget Act also authorized the Commission to "forbear" from applying certain sections of Title II of the Communications Act to mobile services. Bell Atlantic supports the Commission's proposals to exclude commercial mobile services from the Section 203 tariff and other provisions of Title II. However, some (but not all) CMS providers currently must comply with equal access, structural separation, accounting and other requirements. Until those requirements are eliminated, the Commission should impose them on all CMS providers where failure to do so will handicap

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2/ H.R. Rep. No. 103-213, 103d Cong., 1st Sess., Committee on the Budget, Report on the Omnibus Budget Reconciliation Act of 1993 ("Conference Report"), at 490 (emphasis added).

The Conference Report referred several times to the "provisions regarding regulatory parity" in the House and Senate bills. And it directed the Commission, in acting on state petitions to regulate CMS rates, to "ensure . . . that, consistent with the public interest, similar services are accorded similar regulatory treatment." Id. at 494, 497 (emphasis added.)

3/ The Notice (¶ 4 n. 12) states that the Commission may choose to address initially only the PCS service, and defer resolving "non-PCS issues." Bell Atlantic recognizes the time constraints that Congress imposed on the Commission regarding PCS, but urges the Commission to address all issues together. The issues the Notice raises simply cannot be neatly separated between PCS and non-PCS.

certain carriers from freely and fairly competing.[4/] The primary goal is and must be regulatory parity. Put another way, implementation of the Budget Act should not perpetuate or exacerbate competitive inequities.

RECOMMENDATIONS FOR RULES

I. BROAD DEFINITIONS SHOULD BE ADOPTED WHICH FULFILL CONGRESS' GOAL OF EQUAL TREATMENT OF COMPETING MOBILE SERVICE PROVIDERS.

A. "Mobile Service" Should Be Broadly Defined.

The Notice (¶ 9) concludes that the new definition of "mobile service" set forth in Section 3(n) of the Communications Act "is intended to bring all existing mobile services within the ambit of Section 332," and thus favors a broad approach which would include, among other services, all private and public land mobile services. Bell Atlantic agrees that this broad approach is warranted by Section 3(n) and is consistent with Congress' regulatory parity goal. The Commission should, consistent with this approach, explicitly define mobile service to include all auxiliary and other services provided by mobile service licensees

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4/ The Budget Act expressly supports this action. Congress has directed that retaining or imposing rules may be based on the need to promote competition. Section 332(c)(1)(C) states that in considering the need for a particular regulation, "the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services." If the regulation will promote competition, the Commission may use that finding to determine that it "is in the public interest." Imposing certain rules on CMS providers is, as discussed at Sections V and VI of these Comments, essential to promote competition.

which are authorized by the respective rules for that service (e.g., for cellular services, the cellular service option authorized by Section 22.930).

B. The Elements of "Commercial Mobile Service" Should Be Broadly Defined.

Section 332(d)(1) now defines commercial mobile service ("CMS") as mobile service "that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public." The Notice (¶¶ 10-13) asks for comment on how the elements of this definition should in turn be defined.

The Commission should adopt a definition of CMS to include all mobile services that, either in whole or in part, are offered for profit to subscribers and that offer direct or indirect access to the public switched network. This would reflect the realities of today's and tomorrow's mobile services market, where providers compete for subscribers with a wide variety of service options. And, regardless of the specific service option offered, cellular, paging, SMR and other service providers share one overriding common characteristic: all are vying for subscribers. For this reason, all competitors should be able to compete on equal terms for subscribers.

Adoption of this broad definition would include for the first time as commercial services some providers that have previously enjoyed "private" status. But it is the inequity of having two classes of mobile service providers which nonetheless compete that

in large part provoked Congress to rewrite Section 332. As the House Energy and Commerce Committee Report on proposed revisions to Section 332 declared:

> Functionally, these "private" carriers have become indistinguishable from common carriers but private land mobile carriers and common carriers are subject to inconsistent regulatory schemes. . . . The Committee finds that the disparities in the current regulatory scheme could impede the continued growth and development of commercial mobile services and deny consumers the protections they need if new services such as PCS were classified as private.[5/]

A broad definition is also warranted by the underlying purpose of Section 332 and by the difficulties inherent in more restrictive definitions. Because Congress' goal was to bring all competing mobile services under one consistent regulatory structure, the Commission should bring competing mobile services under the same regulatory umbrella, rather than embark on the difficult and counterproductive course of narrowly defining such terms as "for profit" and "interconnected service". Carving out numerous exceptions to CMS would inevitably create loopholes for entities to try to squeeze through in order to avoid regulatory parity, in contravention of Congress' stated intention of creating parity. It would also burden Commission Staff with the need to draw fine distinctions between services.

5/ H.R. Rep. No. 103-111, 103d Cong., 1st Sess., Committee on the Budget, Report on the Omnibus Budget Reconciliation Act of 1993 ("House Report"), at 260.

The Commission's experience in the Computer I proceeding[6/] is instructive. There it adopted definitions of "communications services," which would be regulated, and "data processing services," which would be forborne from regulation. These rules led to endless litigation and uncertainty over which definition applied, which was complicated by the rapidly changing services that telecommunications companies were offering. In Computer II,[7/] the Commission jettisoned the definitional morass which Computer I had created, acknowledging it had led to such "ultimately futile issues" as "the controversy over whether communications is incidental to data processing or data processing is incidental to communications." Id. at 394.

The Commission's poor experience with trying to apply definitions of services in a rapidly changing industry, where substantial regulatory differences turned on those definitions, should lead it to steer clear of embarking on the same wrong path now. The more room the Commission leaves in definitions for providers to claim they offer "private" services, the more uncertain, convoluted and counterproductive its regulatory structure will become. Broad definitions are essential. In the event that an entity believes it has been improperly included, the Commission's declaratory ruling or waiver process would be available to review the specific facts involved.

6/ Regulatory and Policy Problems Presented by the Interdependence of Computer and Communications Services and Facilities, 28 FCC 2d 291 (1970) (subsequent history omitted).

7/ Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980) (subsequent history omitted).

1. "For Profit"

The Notice (¶ 12) asks if a provider should be classified as "for profit" if part of its service (such as interconnection) is offered or provided on a nonprofit or cost-sharing basis. The answer is "Yes." If service to subscribers is on a for-profit basis, it should not be distinguished from other commercial mobile service even if the carrier provides some nonprofit service.

The Notice (¶ 12) also asks if a provider which operates a system for internal use but also makes excess capacity available to subscribers on a for-profit basis should be classified as "for profit." The answer to this question is also yes. Parity compels consistent treatment. The current rules, which permit "private" operators to sell excess capacity to the public in competition with common carrier providers, free of common carrier regulation, create the very regulatory inequity which Section 332 is intended to correct. Continuing to allow excess capacity to be offered for profit but free of regulation simply by calling it "private" would create an enormous and unnecessary loophole where carriers could offer ostensibly "private" service to hundreds or thousands of subscribers, and undermine the purpose of Section 332.

The Notice (¶ 13) also asks if shared systems which employ a for-profit manager should be classified as "for profit." (Notice ¶ 13.) Again, the answer should be yes. Subscribers to such systems pay charges which exceed the costs of providing or sharing services. Excluding such systems from CMS regulation would permit some competing mobile service providers to escape consistent, equal regulation. See House Report at 261.

2. "Interconnected Service"

Bell Atlantic agrees with the Notice's tentative conclusion (¶ 15) that Congress intended to include as commercial mobile services only those services which offer subscribers access to the public switched network, but to exclude services which might be physically interconnected but do not offer interconnected service to subscribers. The definition of CMS in Section 332(d)(1) indicates that Congress wanted interconnection defined in the context of the subscriber.[8/]

"Interconnected service" should, however, be defined to include all services which enable a customer to send or receive messages to or from points in the public switched network, as the Commission suggests at ¶ 16 of the Notice. This approach tracks the plain meaning of Section 332(d)(1). It promotes regulatory parity because where a mobile service provider offers customers the ability to access the network, it is competing directly with existing wireless common carrier services which have traditionally offered access. And it simplifies administration of the rules because it establishes a bright line as to what constitutes interconnected service. The alternative, adopting distinctions among types of access, would be inconsistent with the intent of Section 332(d)(1), undermine the goal of treating commercial

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8/ See Conference Report at 496 ("The Senate definition requires that "interconnected service" must be made available to the public, as opposed to the House definition which simply requires the service offered to the public to be 'interconnected'. . . . The Conference Report adopts the Senate definitions with minor changes.").

mobile services consistently, and lead to the kind of definitional morass the Commission learned from Computer I is unworkable.

Interconnected service should thus include indirect access to the public switched network (i.e., where customers access a PBX, which then transmits messages to or from the public switched network), as well as direct access. It should also include access to the network which utilizes store and forward technology. Many common carrier paging systems use this technology, and have not been classified as private because they offer interconnected service. From the subscriber's viewpoint, the important feature of a service is whether messages can be sent to or received from points in the public switched network. How those messages are transmitted, or what technology is used, should not be the touchstone for classification.

Moreover, development of new PCS technologies promises a wide range of technologies for interfacing with the network. Because the Commission cannot anticipate all such technologies, it should not adopt definitions which narrowly define or constrain them.[9/] This approach is consistent with the Commission's decision in the Intelsat case,[10/] where it found indirect links using store and

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9/ For the same reasons, the Commission should discard the use of the anachronistic term "public switched telephone network" ("PSTN"). That network today is composed of many service providers, not only the traditional telephone companies, and the rules should reflect that fact. Accordingly, the term "public switched network" should be used and should be defined to include both wireless and wired components. (See Notice ¶ 22.)

10/ Report and Order, Establishment of Satellite Systems Providing International Communications, CC Docket 84-1299, 101 FCC 2d 1046 (1985).

forward technology to constitute interconnection. (Notice ¶ 18.)

As the Notice acknowledges (¶ 21), the Private Radio Bureau has considered certain store and forward paging systems not to involve interconnection. The Bureau's rationale appears to have turned on the particular paging technology used, in part due to concerns over the impact of the prior version of Section 332. (Notice ¶ 21 n. 25). Such concern has been eliminated by new Section 332, and indeed the new statute does not permit distinctions based on the particular technology used. The Bureau's approach is also inconsistent with the Commission's Intelsat decision, and ignores the fact that store and forward systems are both physically interconnected and offer subscribers network access. Finally, treating store and forward services as private would remove a wide range of existing commercial service from the definition of CMS, including most public paging operations. There is no indication in the Budget Act or its legislative history that Congress wanted such a significant class of common carrier services to be reclassified as private, exempt from all Title II regulation, simply because subscriber access is not "real time."

3. Service to the "Public"

If a mobile service provider offers access to unaffiliated persons or entities, it is no longer offering a private service, but rather has entered the commercial market in competition with other mobile service operators, and should be treated as a CMS provider.

The Notice (¶ 25) asks whether the definition of CMS should cover systems "targeted to specific businesses" such as utilities, which have previously been regulated as "private". The answer is yes. Where a mobile service provider offers service even to one type of business, it has nevertheless entered the commercial market, in competition with other providers. While a licensee may have targeted its service for a specific type of business, the whole point of the new regulatory structure envisioned by Congress is to dissolve such artificial distinctions. If a carrier is eligible to offer service to the commercial market, it should be considered as providing CMS.

Trying to draw distinctions between allegedly "private" services based on the number or type of customers would ignore the realities of competition. It would embroil the Commission in uncertain and in the end impossible efforts to define what entities or what customers are outside the scope of CMS regulation. For example, if a system were licensed as "private" based on the fact that it offered service to a group of taxi companies, but later expanded to serve trucking firms, would it then be "converted" to CMS? How would the Commission be informed? The Commission would perpetually have to police "private" mobile service to ensure they do not cross the line and become commercial services. Such efforts would place a continuous drain on the Commission's scarce enforcement and oversight resources.

For the same and other reasons, system capacity, employment of frequency reuse, or service area should not be relevant to defining whether a service is CMS. (Notice ¶¶ 26-27.) Section

332(d)(1) nowhere implies that Congress intended the Commission to incorporate these characteristics into the definition of CMS. If a system is publicly available, it is irrelevant that it may have few channels, may not employ frequency reuse, or may serve small geographic areas. As the Notice recognizes (¶ 26), low-capacity and geographically limited systems currently provide both common carrier and private service. For example, cellular carriers in some rural service markets operate only a handful of cells, and do not need to employ frequency reuse. But there is no question that they are offering service to the public. Adopting a capacity or size test would move some services from being regulated as common carriers into the private classification, undermining Congress' intent to create regulatory parity. In addition, the Commission would be forced into an administrative thicket requiring it to ascertain at what point a "private" system added sufficient capacity, or expanded into sufficient geographic areas, to be transformed into a "commercial" system.

Congress expressly deferred to the Commission to complete the definition of the elements of CMS, based on the Commission's experience. That experience teaches that a bright-line approach which avoids uncertainty is best. And, as noted above, the Commission has waiver and declaratory ruling procedures to address the rare case where a provider which sells service could seek to show why it should nonetheless be classified as "private."

C. "Private Mobile Service" Should Be Narrowly Defined to Exclude All Services Which Are Functionally Equivalent to CMS.

Section 332(d)(3) defines "private mobile service" as any mobile service "that is not a commercial mobile service or the functional equivalent of a commercial mobile service." As the Commission notes, this definition is ambiguous with respect to how "functionally equivalent" services should be treated. The better reading is the alternative the Commission discusses at ¶ 31 of the Notice; that is, a mobile service that does not fall within the literal definition of CMS would still be classified as CMS if it is "functionally equivalent" to CMS. This reading will best implement the goal of the legislation, to bring all competing services under equivalent regulation. It is also supported by the Conference Report, which clearly indicates that "functionally equivalent" service was to be regulated as CMS.[11/]

The alternative reading discussed in ¶ 29 of the Notice would be inconsistent with the Act because it would treat as "private" some services which nevertheless meet the statutory definition of CMS. As the Commission notes, such a reading would expand the number of mobile services that would be classified as private, perpetuating the two-tier regulatory structure that Congress intended to eliminate. It would also promote endless litigation as Computer I did, by encouraging CMS providers to seek exemption

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11/ Conference Report at 496: "Further, the definition of 'private mobile service' is amended to make clear that the term includes neither a commercial mobile service nor the functional equivalent of a commercial mobile service, as specified by regulation by the Commission."

from CMS regulation by claiming that they are not "functionally equivalent." Only if "private" service is defined to exclude all service which is "functionally equivalent" to CMS, as the Commission suggests in ¶ 31 of the Notice, would the Commission be able to enforce Section 332 as Congress intended.

II. MOST SERVICES SHOULD BE CLASSIFIED AS CMS TO FULFILL THE GOAL OF REGULATORY PARITY.

The Notice at ¶¶ 34-48 asks for comment on whether certain types of mobile services should be classified as commercial or private services. The point of new Section 332 is to eliminate old distinctions which led to unequal regulation of competing services. If that essential principle and Congressional goal is used as the guidepost, classifications can be made with little difficulty.

SMR Systems. The Commission asks whether it should classify SMR systems which either do not offer "wide area" service, or do not employ frequency reuse, as "private." (Notice ¶ 36.) The answer to this question is "no," for the following reasons:

(a) There is nothing in the legislative history or language of Section 332 which requires the Commission to adopt such a narrow definition of which SMR operations may be left as private. While the Conference Report (at 421) states the Commission "may" want to treat systems that neither serve wide areas nor employ frequency reuse as private, there is no direction that it do so.

(b) Treating such systems as "private" would violate the fundamental objective of Section 332 by leaving outside the scope of CMS numerous SMR systems which compete for customers with

cellular systems and other mobile service providers. For example, a service may be targeted to classes of subscribers in pockets of areas across wider geographic markets. These systems are in fact offered to the public or, at a minimum, to "broad or narrow classes of users."[12/]

(c) The Commission would be compelled to monitor the operations of each such SMR system, or require extensive and timely self-reporting, to ensure that it does not cross the line beyond what constitutes private service.

Private Carrier Paging. These services should be treated as CMS, because, as the Commission notes, they "are generally provided for profit and without significant restrictions on eligibility, service area or capacity." (Notice ¶ 39.) The fact that they may employ store and forward technology would not, because of how "interconnected service" would be defined, make those services private.

Common Carrier Paging. For the same reasons, existing common carrier paging services should be treated as CMS, even if they employ store and forward technology, and regardless of the capacity of the system. (Notice ¶ 41.)

PCS. Bell Atlantic agrees with the Commission's tentative conclusion that all personal communications services may not meet

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12/ Conference Report at 496. By expressly referring to "narrow" classes of users, Congress wanted some services, even though offered only to a specific type of customer, to constitute CMS if the other definitional elements ("for profit" and "interconnected service") were met. Otherwise, SMR systems which compete for one type of business, but who nonetheless compete with traditionally public services, would be exempted and parity would be undermined.

the definition of a commercial mobile service. (Notice ¶ 45.) At this early stage in the development of PCS, it is impossible to know all of the PCS services which may be offered, and there are likely to be PCS applications which are not for profit, not interconnected, or unavailable to "broad or narrow" classes of subscribers. But in creating the PCS service, the Commission clearly contemplated that PCS would principally be a commercial service. It found that PCS offers potentially significant competition to existing commercial wireless services, and is requiring that PCS licensees make service available to the public within specified time periods.[13/]

To be consistent with that decision and with Congress' desire for a single regulatory structure, PCS should be presumptively treated as CMS. Each PCS provider would be free to demonstrate that one or more services it offers fall outside the definition of CMS and is thus "private." This approach would avoid the concern the Commission notes as to not restricting diversity of PCS applications (Notice ¶ 45), while avoiding the burdens of constant administrative oversight and uncertainty which it acknowledges may result from not classifying CMS at all (¶ 48).

Cellular. The Notice does not discuss how conventional cellular service should be classified. As with the above services, it is principally offered to subscribers on a commercial

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13/ Second Report and Order, Amendment of the Commission's Rules to Establish New Personal Communications Services, GN Docket No. 90-314, Oct. 22, 1993. New Section 99.206 requires licensees to offer service to increasing percentages of the population in their service areas over time, culminating in service availability to 90 percent of the population within 10 years.